

Appl. No. 10/042,875
Amndt. dated January 7, 2005
Reply to Office Action of October 4, 2004

Remarks

Claims 9, 16, 40, 42-71, 74, 78-88 and 91 are pending in the instant application. In the Office Action mailed October 4, 2004, the Examiner allows claims 85-88 and 91 and rejects claims 9, 16, 40, 42-71 and 78-85. Based on the remarks made herein, Applicants respectfully request that the rejections be withdrawn and that the application be passed to allowance.

1. Paragraph 1 of the Office Action Mailed October 4, 2004: Proper Format for Abstract

In the Office Action mailed October 4, 2004, the Examiner reminds Applicants of the proper format for abstracts of the disclosure. Applicants amend the "Abstract of the Disclosure" herein.

2. Paragraph 3 of the Office Action Mailed October 4, 2004: Rejection Under Judicially Created Doctrine of Obviousness-Type Double Patenting

In the Office Action mailed October 4, 2004, the Examiner rejects claims 9, 40, 43-71 and 78-87 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 5,990,377. A Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) is being submitted herewith as U.S. Patent No. 5,990,377 is commonly owned with the present application. Applicants respectfully request that the present rejection for obviousness-type double patenting be withdrawn.

3. Paragraph 6 of the Office Action Mailed October 4, 2004: Rejection Under 35 U.S.C. §103(a)

In the Office Action mailed October 4, 2004, the Examiner rejects claims 9, 40, 42-48, 50-53, 55-71, 74, 78-88 and 91 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,763,044 issued to Ahr et al. (hereinafter "the Ahr patent"). Applicants respectfully traverse the rejection.

With respect to claims 9, 42, 44, 45, 48, 49, 54, 57, 59, 67, 69, 74, 76 and 79-81, the Examiner believes the Ahr patent discloses an absorbent web capable of being used as a pad and having a dry feel when wet. The Examiner believes the Ahr patent discloses an absorbent web including a cellulosic basesheet having an upper surface and a lower surface, the upper surface having elevated and depressed regions. The Examiner also believes the Ahr patent discloses an absorbent web having hydrophobic matter preferentially on the elevated regions of the upper surface of the base sheet. The Examiner relies on the incorporation by reference of U.S. Patent

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No. 3,881,987 to Benz into the Ahr patent disclosure; the Examiner believes U.S. Patent No. 3,881,987 discloses a "sheet" depth of at least 0.2 millimeters. The Examiner acknowledges that the Ahr patent does not disclose the claimed performance test characteristics. The Examiner believes however that the Ahr patent discloses similar materials for the web as well as provides a method of making a wetlaid web. Thus, the Examiner believes the Ahr patent discloses a topsheet capable of having the claimed performance characteristics. The Examiner believes that when the structure recited in a reference is substantially identical to the structure of the pending claims, the claimed properties or functions are presumed to be inherent.

With respect to claim 40, the Examiner believes the Ahr patent discloses a basesheet that is wetlaid. The Examiner also believes the Ahr patent discloses the subject matter of claims 43, 46, 47 and 52. With respect to claims 50 and 68, the Examiner believes the Ahr patent discloses 9-400 apertures per square inch and that U.S. Patent No. 3,881,987 to Benz discloses an aperture height of .254-1.01 millimeters. With respect to claims 51, 55 and 66, the Examiner acknowledges that the Ahr patent does not disclose the claimed Rewet values. The Examiner believes the Ahr patent discloses that the choice of fibril length and fibril density can be varied and will affect rewet characteristics. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of the Ahr patent with the claimed Rewet value, since the Examiner believes discovering an optimum value of a result effective variable involves only routine skill in the art. The Examiner believes the Ahr patent discloses a base sheet including 20% or greater of high yield pulp fibers. With respect to claims 53 and 84, the Examiner believes the Ahr patent discloses superabsorbent on the base sheet. The Examiner also believes the Ahr patent discloses the aspects of claims 56, 78, 82 and 83. With respect to claim 58, the Examiner believes the Ahr patent discloses a base sheet that is airlaid. With respect to claim 60, the Examiner acknowledges that the Ahr patent does not disclose a fibrous nonwoven web. However, the Examiner believes it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the loose fibrils disclosed by the Ahr patent in a nonwoven web. With respect to claim 61, the Examiner believes the Ahr patent discloses that the hydrophobic matter includes synthetic fibrils. With respect to claim 62, the Examiner acknowledges that the Ahr patent does not disclose that the hydrophobic matter may include polyolefin, but the Examiner believes the Ahr patent discloses that fibrils may be formed from a generally hydrophobic material. The Examiner believes it is well known in the art to use polyolefin materials in absorbent articles. The Examiner believes the Ahr patent discloses the subject matter of claims 63 and 64. With respect to claims 70 and 71, the Examiner believes the Ahr patent discloses a base sheet having a basis weight of .058-14.6 g/m². The Examiner acknowledges that

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the Ahr patent does not disclose the basis weight of the hydrophobic matter. However, the Examiner believes the Ahr patent discloses that the choice of fibril length and fibril density can be varied and will affect rewet characteristics. The Examiner believes that the Ahr patent recognizes that the function of the topsheet in terms of rewet, acquisition and tactile feel is a result effective variable of fibril length and density. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of the Ahr patent with the claimed basis weight of the hydrophobic matter, because the Examiner believes that discovering an optimum value of a result effective variable involves only routine skill in the art.

Independent claim 9 of the present invention is directed to an absorbent web including an inherently hydrophilic basesheet including papermaking fibers and having an upper surface and a lower surface. The upper surface has elevated and depressed regions characterized by a Wet Compressed Bulk of about 5 or greater. The basesheet also includes hydrophobic matter deposited preferentially on the elevated regions of the upper surface of the basesheet and on a portion of the lower surface of the basesheet.

Independent claim 57 of the present invention is directed to a pad including a plurality of wet resilient wet-laid, textured, cellulosic tissue webs including hydrophilic papermaking fibers. The webs are joined together in a superposed relationship by adhesive. The webs have a dry bulk of about 9 cubic centimeters per gram, a Wet Compressed Bulk of at least about 6 cubic centimeters per gram. The pad includes a first outermost tissue web having an upper surface and a lower surface where the upper surface faces outward from the pad and has elevated and depressed regions and has hydrophobic matter selectively deposited on the elevated regions of the upper surface of the at least one outermost tissue web.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. The Examiner bears the initial burden of establishing the *prima facie* case. See In re Piasecki, 223 U.S.P.Q. 785,787, 745 F.2d 1468, 1471 (Fed. Cir. 1984). Applicants respectfully submit that the Ahr patent does not teach or suggest all of the limitations of the invention as claimed.

The Examiner acknowledges that the Ahr patent does not disclose the "Wet Compressed Bulk" feature of claims 9 and 57, but the Examiner believes the structures disclosed by the Ahr

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patent would inherently have this feature. Applicants disagree. "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." MPEP §2112 IV, citing In re Rijckaert, 9 F.3d 1531, 1534 (Fed. Cir. 1993). The Examiner has not made it clear that the structures of the Ahr patent would necessarily have the claimed Wet Compressed Bulk values. In fact, it is unlikely that the structures of the Ahr patent would have the claimed Wet Compressed Bulk values because the Ahr patent teaches away from structures having the claimed Wet Compressed Bulk values for the following reasons. As provided in the Abstract, the Ahr patent is directed to webs that are dispersible and flushable. The Ahr patent teaches away from structures having the claimed Wet Compressed Bulk values because the Ahr patent discloses "temporary" wet strength resins that provide dispersibility during disposal. (See Col. 5, lines 20-32 of the Ahr patent). Those of skill in the art understand that good dispersibility when wet is a feature that is contrary to the desired wet resiliency claimed by the present invention. If a material loses its wet strength a short time after being wetted, it is unlikely to have the claimed Wet Compressed Bulk value. Further, the Ahr patent teaches a preferred fiber furnish that includes about 90 percent Eucalyptus fibers. (See Col. 4, lines 34-44 of the Ahr patent). Eucalyptus fibers are known in the art as being short in length and useful for softness and flexibility as opposed to wet resiliency. Therefore, there is no evidence that the structures of the Ahr patent would have the requisite Wet Compressed Bulk values. For at least these reasons, the Examiner has not established a *prima facie* case of obviousness for independent claims 9 and 57 because the Examiner has not established how the Ahr patent teaches or suggest each of the limitations in these claims.

Dependent claims 40, 42-48, 50-53, 55-56, 58-71, 74 and 78-84 are patentable over the Ahr patent for at least the reasons provided above. Additionally, Applicants disagree with the Examiner's conclusion that U.S. Patent No. 3,881,987 to Benz (incorporated by reference in the Ahr patent) discloses a height of apertures corresponding to at least .254 millimeters and therefore a sheet depth of at least .2 millimeters. The Examiner's calculation of apertures 0.25 mm in height is based upon a misunderstanding of U.S. Patent No. 3,881,987 to Benz (hereinafter "the Benz patent"). Where the Benz patent discloses apertures having diameters from about 0.015 to about 0.050 inches, and a cross-sectional area from about 0.15×10^{-3} to 2.0×10^{-3} square inches, essentially the same information is being disclosed. The cross-section is looking at is the circle itself in plan view, as seen from above. In other words, the cross-sectional area refers to the area of the circles themselves. A circle with a diameter of 0.050 inches has an area of $3.1416/4 * (0.050)^2 = 1.9 \times 10^{-3}$ square inches, which can be rounded up to 2.0×10^{-3} square inches, the value provided in the Benz patent for the upper limit of the "cross-sectional area" range. (See Col. 9,

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lines 1-10 of the Benz patent). A circle with a diameter of 0.015 inches has an area of $3.1416/4^*$ $(0.015)^2 = 0.18 \times 10^{-3}$ square inches, which can be rounded down to 0.15×10^{-3} square inches, identical to the lower range value for "cross-sectional area" provided in the Benz patent. (See Col. 9, lines 1-10 of the Benz patent). These "cross-sectional areas" are the areas of circles having the stated diameters and not the area of a cylinder around an aperture (from which a height of the cylindrical area could be back-calculated). The Examiner is attempting to imply that the "cross-sectional area" dimension in the Benz patent and therefore, incorporated in the Ahr patent, could be used to calculate the "Overall Surface Depth" value described in dependent claims 45, 48, 67 and 80; such is not the case. Further, even if one attempted to use the "cross-sectional area" dimension to calculate "Overall Surface Depth", the description of the present invention provides that apertured areas should be excluded when measuring the height of surface topography. (See Page 22, lines 9-21 of the present application as filed). Because "cross-sectional area" can not be used to derive the "Overall Surface Depth", the Examiner has not shown how the Ahr patent teaches or suggest each of limitations of claims 45, 48, 67 and 80.

With respect to dependent claim 46, the Examiner believes that Fig. 7 of the Ahr patent teaches or suggests the limitation of "said hydrophobic matter comprises synthetic fibers fixedly attached to the upper surface of said basesheet such that about 50% or less of the surface area of the basesheet is covered with the synthetic fibers". Looking at Fig. 7 of the Ahr patent, the surface of the "fibrous structure 52" covered by "fibrils 54" is greater than 50%. For at least this reason, the Ahr patent does not disclose the features of claim 46. With respect to dependent claims 51, 55 and 66, the Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the article of the Ahr patent with the claimed Rewet value because discovering an optimum value of a result effective variable involves only routine skill in the art. For at least the reasons provided above with respect to independent claims 9 and 57, the Examiner cannot rely that the structures of the Ahr patent "may" have the claimed Rewet values in order to establish a *prima facie* case of obviousness. Because the structures of the Ahr patent are intended to be "dispersible" and "flushable", there is no basis for asserting that the structures would have the claimed Rewet values. With respect to dependent claim 56, the Examiner believes Fig. 7 of the Ahr patent discloses the features of claim 56. However, the Examiner does not explain how the aspect of "said lower surface of the basesheet further comprises wet-resilient protrusions adjacent said aperture" is taught or suggested by Fig. 7 of the Ahr patent. For at least this reason, the Ahr patent does not teach or suggest every limitation of claim 56. For at least these reasons, Applicants respectfully submit that dependent claims 40, 42-48, 50-53, 55-56, 58-71, 74 and 78-84 are patentable over the Ahr patent and that the rejection should be withdrawn.

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4. Paragraph 7 of the Office Action Mailed October 4, 2004

In the Office Action mailed October 4, 2004, the Examiner indicates that the subject matter of claims 85-88 and 91 is patentable. Applicants appreciate the Examiner's indication of allowable subject matter. Applicants request that the Examiner confirm that claims 85-88 and 91 are indeed, allowable because the Examiner also included these claims in the rejection made in Paragraph 6 of the Office Action mailed October 4, 2004, but she did not indicate how the Ahr patent disclosed the features of these claims in the text of Paragraph 6. Additionally, Applicants respectfully request clarification from the Examiner on the status of independent claim 16; independent claim 16 is pending in the present application but it was neither rejected nor identified as being "allowable" in the Office Action mailed October 4, 2004.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 9, 16, 40, 42-71, 74, 78-88 and 91. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

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The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

Respectfully submitted,
FUNG-JOU CHEN ET AL.

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CERTIFICATE OF FACSIMILE TRANSMISSION

I, Judy Garot, hereby certify that on January 7, 2005 this document is being sent by facsimile transmission addressed to the Commissioner for Patents, Alexandria, VA via facsimile number (703) 872-9306.

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